

## **REMARKS**

### **In the Drawings:**

In response to the Office Action dated June 30, 2004, Applicant submitted Replacement Sheets for the Figures with the August 30, 2004 Amendment. Should the Examiner require any additional corrections or other drawings, Applicant respectfully requests that the Examiner indicate so in the next Office Action.

Applicant has amended Claims 30 and 33. Applicant represents that the features specified in Claims 30 and 33 are shown in the figures. More specifically, the flange is numbered 76 in Figures 10 and 11.

### **In the Claims:**

#### **Election/Restrictions**

In light of the election of Claims 28-33, Applicant has cancelled Claims 1-27 and 34-40.

#### **35 U.S.C. § 112**

In the Office Action dated June 30, 2004, the Examiner rejected Claims 30 and 33 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. More specifically, the Examiner rejected Claims 30 and 33 as new matter. Applicant amended Claims 30 and 33 in the Amendment dated August 30, 2004. This amendment was not entered in the Advisory Action. In this paper, Applicant resubmits these amendments. The amended claims state that the flange extends past said first bracket half. The amended Claims 30 and 33 are supported by Figures 10 and 11, as well as pages 13 and 14 of the application. Applicant respectfully requests that the Examiner withdraw this rejection of Claims 30 and 33.

In the June 30, 2004 Office Action, the Examiner also rejected Claims 30-33 under 35 U.S.C. § 112, second paragraph, as failing to particularly point out and distinctly claim the subject matter. More specifically, the Examiner rejected Claims 30 and 33 as being vague and indefinite. In view of the amendments discussed in the preceding paragraph, Applicant submits that the language of Claims 30 and 33 specifically reference the flange (76) of the enclosure extending past the first bracket half. Applicant respectfully requests that the Examiner further consider these amendments and allow Claims 30-33.

Finally, in the June 30, 2004 Office Action, the Examiner stated the term “the electromechanical flexible enclosure” lacked clear antecedent basis, and therefore rejected Claim 31. In the August 30, 2004 Amendment, the Applicant amended Claim 31 to cure the antecedent issue. This amendment was not entered. In the present paper, Applicant resubmits this amendment, and respectfully requests that it be entered. Applicant believes that this amendment cures any antecedent issue and respectfully requests that the Examiner withdraw the 35 U.S.C. § 112 rejection of Claim 31.

### **35 U.S.C. § 102**

In the Office Action dated June 30, 2004, the Examiner rejected Claims 28-33 as being anticipated by Muderlak et al. (WO 97/13086). The Examiner stated that Muderlak et al. discloses a drive mechanism for a flush lever of a sanitary fixture comprising an electromechanical actuator (60) mounted on a moveable plate (62) within an enclosure (52), operably engaging the flush lever (30); first (74) and second (80) bracket halves projecting from the enclosure, substantially enclosing and rigidly engaging a bushing (44) and a hexagonal nut (46) securing the flush lever to the sanitary fixture; fasteners (84) for securing the first and

second bracket halves to the enclosure; and a power source (104) for the electromechanical actuator; and wherein opposing faces of the first and second bracket halves comprise a complementary topography to the bushing and nut.

In the Amendment dated August 30, 2004, Applicant submitted that Muderlak et al. did not anticipate Claims 28-33 because the gear (62) was not a movable plate as claimed in the present application. In the Advisory Action, the Examiner stated that the claims were not in condition for allowance and that Applicant appeared “to be reading a considerable amount of the specification into the claims.”

Applicant submits additional, new arguments that Claims 28 and 31 are patentable over Muderlak et al. (WO 97/13086) because Muderlak et al. fails to disclose a “an electromechanical actuator mounted on a movable plate, within an enclosure, operably engaging the flush lever.” More specifically, Applicant submits that the actuating element (60) in Muderlak et al. is not an “electromechanical actuator” as required by both Claims 28 and 31. The term “electromechanical” relates to converting electrical energy to mechanical energy. On at least page 11 of Muderlak et al., the actuating element (60) is described as a pin 60: Muderlak et al. does not disclose that this pin 60 converts electrical energy to mechanical energy. Therefore, the actuating element (60) in Muderlak et al. is not an “electromechanical actuator mounted on a movable plate,” as required by Claims 28 and 31. Applicant respectfully requests that the Examiner withdraw the rejections of Claims 28-33 and grant allowance of the pending Application.

### **SUMMARY**

Applicant submits that pending Claims 28-33 are allowable. Applicant therefore respectfully requests that the Examiner withdraw the rejections, and grant allowance of this

application. The Examiner is invited to contact the undersigned attorney for the Applicant via telephone if such communication would expedite this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'AD Airhart', written over a horizontal line.

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